

**FILED**

NOV 09 2017

  
CLERKUNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
SOUTHERN DIVISION

GREGORY A. WITTE,

Plaintiff,

vs.

KEVIN BITKER TRUCKING, INC., a  
Minnesota Corporation, and TRAVIS K.  
BITKER,

Defendants.

CIV. 17 - 4157

**COMPLAINT AND  
DEMAND FOR JURY TRIAL**

COMES NOW the Plaintiff, by and through his attorneys of record, and for his Complaint against the above-named Defendants states and alleges as follows:

**PARTIES**

1.

Plaintiff Gregory A. Witte (hereinafter "Plaintiff") is and, at all times relevant hereto, was a resident of Brookings, South Dakota.

2.

Upon information and belief, Defendant Kevin Bitker Trucking, Inc. (hereinafter "Defendant Kevin Bitker Trucking") is a duly licensed Minnesota corporation with its principal place of business in Bemidji, Minnesota.

3.

Upon information and belief, Defendant Travis K. Bitker (hereinafter "Defendant Bitker") is and, at all times relevant hereto, was a resident of Bemidji, Minnesota. At all times

relevant hereto, Defendant Travis K. Bitker was an employee or agent of Defendant Kevin Bitker Trucking.

#### **JURISDICTION AND VENUE**

4.

This Court has jurisdiction over the persons and subject matter of this action pursuant to the provisions of 28 U.S.C. § 1332 because the amount of damages in controversy exceeds \$75,000.00, exclusive of interest and costs, and complete diversity of citizenship is present between Plaintiff and Defendants.

5.

This action is properly venued with this Court pursuant to the provisions of 28 U.S.C. § 1391(b)(2) because the cause of action occurred in the Southern District of the State of South Dakota.

#### **FACTS**

6.

On or about January 6, 2016, Plaintiff was operating a tow truck and was in the process of finishing towing a vehicle out of the northbound ditch on Interstate 29 in rural Brookings County, South Dakota.

7.

At the same time, Defendant Bitker was operating a semi-truck that was traveling northbound in the driving lane on Interstate 29 in rural Brookings County, South Dakota.

8.

Defendant Bitker attempted to pass another semi-truck on the right after the other semi-truck had moved over to the passing lane to move over for Plaintiff's tow truck and the vehicle Plaintiff was assisting on the side of the roadway.

9.

Plaintiff was standing outside of the vehicle he was assisting talking with the driver when Defendant Bitker failed to move over causing his semi-truck to suddenly collide into Plaintiff's tow truck. Plaintiff's tow truck was shoved forward and struck Plaintiff.

10.

Defendant Bitker received a citation for failing to comply with the move over law in violation of SDCL § 32-31-6.1 at the scene of the collision. Defendant Bitker subsequently pled guilty to the citation and paid a fine.

11.

As a result of the collision, Plaintiff sustained serious injuries and damages, including, but not limited to, personal injuries which required medical treatment. Additionally, he has experienced pain and suffering, permanent impairment and disability, loss of enjoyment of the capacity of life, loss of past and future earned wages, past and future medical costs and expenses, and other general and special damages.

#### **COUNT I**

#### ***Negligence Against Defendant Travis K. Bitker***

12.

Plaintiff hereby realleges paragraphs 1-11 of this Complaint and hereby incorporates them as if fully set forth herein.

13.

Defendant Bitker owed a duty of care to the Plaintiff to exercise ordinary care and awareness in the operation, management, maintenance and control of his vehicle, including, but not limited to, a duty to operate his vehicle in a safe and reasonable manner, a duty to use the vehicle in a safe and reasonable manner, and a duty to travel along the streets and roads located in the State of South Dakota in a safe and reasonable manner.

14.

At the time of the collision, Defendant Bitker negligently and carelessly departed from the proper standard of care which caused the collision. Defendant Bitker breached his duties owed to Plaintiff by negligently operating his vehicle, by negligently using his vehicle, by negligently traveling along the roads and streets located in the State of South Dakota, and in several respects, including, but not limited to:

- (a) Failing to keep a proper lookout for other vehicles and persons;
- (b) Failing to comply with the move over law;
- (c) Failing to keep his vehicle under control; and
- (d) Otherwise generally failing to operate his vehicle in a safe and prudent manner.

15.

Defendant Bitker's operation of the vehicle he was driving at the time of the collision was negligent and the proximate cause of injuries and damages sustained by the Plaintiff.

16.

As a direct and proximate cause of Defendant Bitker's negligence, Plaintiff has sustained injuries, including, but not limited to, personal injuries resulting in a course of medical treatment; permanent impairment, disability; disfigurement, past, present, and future pain and suffering;

loss of enjoyment of the capacity of life, emotional distress; property damage; loss of past and future earnings; past and future medical costs and expenses; and other general and special damages; all of which are compensable under South Dakota law.

**COUNT II**

***Respondeat Superior Against Defendant Kevin Bitker Trucking, Inc.***

17.

Plaintiff hereby realleges paragraphs 1-16 of this Complaint and hereby incorporates them as if fully set forth herein.

18.

At all times relevant hereto, Defendant Travis Bitker was acting within the scope of his actual, express, apparent, and/or implied authority, as well as acting within the scope of his employment duties for Defendant Kevin Bitker Trucking.

19.

The conduct of Defendant Bitker that resulted in the aforementioned collision was reasonably foreseeable, and therefore, imputable to Defendant Kevin Bitker Trucking under the doctrine of Respondeat Superior.

20.

Pursuant to the doctrine of Respondeat Superior, Defendant Kevin Bitker Trucking is responsible for the negligent conduct of Defendant Travis Bitker alleged in Count I above.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff respectfully prays for damages against the Defendants as follows:

- (1) For Plaintiff's compensatory, general and special damages in an amount that the jury deems just and proper under the circumstances;

- (2) For Plaintiff's costs and disbursements herein;
- (3) For prejudgment and post-judgment interest; and
- (4) For such other and further relief as the Court determines to be just and proper.

Dated this 8th day of November, 2017.

**JOHNSON, JANKLOW, ABDALLAH,  
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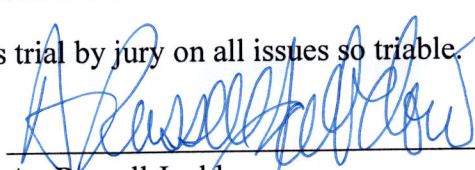
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**DEMAND FOR JURY TRIAL**

Plaintiff hereby respectfully demands trial by jury on all issues so triable.

  
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Kimberly J. Lanham